

TERMS OF INSTRUMENT - PART 2
PROPOSED STATUTORY RIGHT OF WAY AGREEMENT
FOR DISCUSSION WITH BC HYDRO

THIS AGREEMENT dated for reference <*>, 201 (the “**Effective Date**”), is

BETWEEN:

Insert name and address of owner of parcel of land, part or all of which will be impacted (but not purchased outright by BC Hydro) by Site C Dam reservoir. This will be the Transferor as set out in Item 5 on Page 1 (Form C) of the attached General Instrument – Part 1

(“**Owner**”)

AND:

British Columbia Hydro and Power Authority, a corporation constituted under the authority of the Hydro and Power Authority Act, R.S.B.C. 1996, c. 212, as amended and the Transferee as set out in Item 2 on Page 1 (Form C) of the attached General Instrument – Part 1

(“**BC Hydro**”)

(collectively the “**Parties**”)

WHEREAS:

- A. BC Hydro intends to construct and operate the Site C Clean Energy Project (the “**Project**”), consisting of a dam and hydroelectric generating station on the Peace River, a reservoir (the “**Reservoir**”), and other components as described in Schedule A of the Environmental Assessment Certificate;
- B. The Owner is the owner of the land as set out in Item 2 on Page 1 (Form C) of the attached General Instrument – Part 1 (the “**Land**”);
- C. The construction and operation of the Project will temporarily or permanently flood, adversely impact or injuriously affect part or all of the Land;
- D. BC Hydro intends to acquire the part of the Land that is within the Reservoir Impact Area;
- E. This statutory right of way agreement is necessary for the construction and operation of the Project within the Flood Impact Area and the Operational Impact Area.

NOW THEREFORE in consideration of the premises and the mutual covenants and agreements of the Parties contained in this Agreement (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Capitalized words or phrases not defined elsewhere in this Agreement or in its recitals have the following meanings:

- (a) **“Agreement”** means this Agreement;
- (b) **“BC Hydro”** includes Contractors;
- (c) **“Business Day”** means any day except Saturday, Sunday or a statutory holiday in British Columbia;
- (d) **“Cancellation”** means a decision by BC Hydro to permanently cancel the Project and excludes decisions, without limitation, to temporarily slow, alter, delay or stop the development or construction of the Project;
- (e) **“Claims”** means any and all actions, causes of action, suits, claims, demands, proceedings, damages, losses, liabilities, and costs of any nature or kind, whatsoever and however arising, whether known or unknown, and whether in law, in equity or otherwise;
- (f) **“Contractors”** means BC Hydro servants, agents, contractors and subcontractors, including the General Contractor;
- (g) **“Current River Level”** means a line which denotes the maximum normal river level as shown in light blue outline on the sketch plan at Appendix A;
- (h) **“Default Notice”** is as defined in Section 5.1;
- (i) **“Dispute”** and **“Dispute Notice”** are as defined in Section 7.1;
- (j) **“Effective Date”** means effective date of this Agreement as noted above;
- (k) **“End-Service Date”** means the date on which the Project permanently ceases;
- (l) **“Environmental Assessment Certificate”** means *;
- (m) **“Erosion Impact Line”** means an impact line located inland from the Reservoir as shown in heavy green outline on the sketch plan at Appendix A and which demarcates the boundary beyond which the top of the Reservoir slope is not expected to regress because of progressive erosion over a period of 100 years;

- (n) **“Flood Impact Area”** means the area between the Reservoir Line and the Flood Impact Line as shown in dark blue cross hatching on the sketch plan at Appendix A;
- (o) **“Flood Impact Line”** means an impact line located at an elevation of 466 metres as shown in heavy orange outline on the sketch plan at Appendix A and which demarcates the boundary beyond which floods, wind generated waves and waves caused by boats and small landslides are not expected;
- (p) **“General Contractor”** means any general contractor selected by BC Hydro for the Project;
- (q) **“Impact Lines”** means the Erosion Impact Line, the Flood Impact Line, the Reservoir Line, the Stability Impact Line and the Wave Impact Line;
- (r) **“In-Service Date”** means the date on which the Project commences ...;
- (s) **“Operational Impact Area”** means the area between the Flood Impact Line and one or more of the Erosion Impact Line, Stability Impact Line or Wave Impact Line as shown in light red cross hatching on the sketch plan at Appendix A;
- (t) **“Owner”** includes executors, administrators, successors and assigns as the context so admits;
- (u) **“Party”** means a party to this Agreement and **“Parties”** means both of them;
- (v) **“Person”** means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization, association or governmental authority;
- (w) **“Project Authorizations”** means any rights, tenures, permits, certificates, approvals, licences, investigative use permits, temporary use permits, orders, other authorizations or exemptions, granted or to be granted by the Crown or other regulatory or governmental authorities for the Project and any amendments or supplements to or replacements of the same and any other decisions made or actions taken by the Crown or other regulatory or governmental authorities that are required for the Project;
- (x) **“Project Completion”** means the completion, in accordance with all applicable Authorizations, of the decommissioning of the Project facilities and their removal or, if applicable, abandonment in place, and of any reclamation or restoration activities required in connection with such decommissioning, removal or abandonment in place, as the case may be, following the End-Service Date of the Project, as reasonably determined by BC Hydro in accordance with applicable Authorizations;

- (y) **“Reservoir Impact Area”** means the area between the Current River Level and the Reservoir Line as shown in light blue diagonal hatching on the sketch plan at Appendix A;
- (z) **“Reservoir Line”** means an impact line which denotes the maximum normal reservoir level at an elevation of 461.8 metres as shown in heavy blue outline on the sketch plan at Appendix A;
- (aa) **“Stability Impact Line”** means an impact line located inland from the Reservoir as shown in heavy purple outline on the sketch plan at Appendix A and which demarcates the boundary beyond which land is not expected to be affected by landslides caused by reservoir impoundment and operations; and
- (bb) **“Wave Impact Line”** means an impact line located inland from the Reservoir as shown in heavy dashed purple outline on the sketch plan at Appendix A beyond which land use is not expected to be affected by waves caused by landslides on the bank on the opposite side of the Reservoir from Lynx Creek, Farrell Creek and Halfway River.

1.2 In this Agreement:

- (a) if a word or phrase is defined, then its other grammatical forms will have a corresponding meaning;
- (b) the singular may include the plural and conversely, where context requires it, and a reference to a gender includes all genders;
- (c) the words “include”, “includes” and “including” are to be read as if followed by the words “without limitation”;
- (d) a reference to any Party includes that Party’s successors at law and permitted assigns;
- (e) a reference to “\$” is to the currency of Canada;
- (f) headings are for convenience only and do not form part of this Agreement nor affect its interpretation;
- (g) if the time for doing an act required to be done under this Agreement falls or expires on a day that is not a Business Day, the time is extended to the end of the next Business Day;
- (h) unless otherwise expressly provided, any representation or warranty of a Party is made as of the Effective Date and is not continuing;
- (i) the language in this Agreement expresses the mutual intent of the Parties and no rule of strict construction shall be applied against either Party; and

- (j) where a reference is made to a statute, then the reference includes any regulations related to the statute and references to statutes or regulations include all amendments thereto and any statutes or regulations that replace, amend, or supersede the same.

1.3 The attached Schedule is part of this Agreement:

Schedule A – Sketch Plan of Land Showing Impact Lines at the Effective Date

- 1.4** Unless otherwise expressly stated herein, if there is any inconsistency or ambiguity between the terms contained in the body of this Agreement and the terms contained in its Schedule, then the terms contained in the body shall govern (but only to the extent required to remove the inconsistency or ambiguity).

**ARTICLE 2
FLOOD IMPACT AREA**

- 2.1** Subject to Section 2.3, for purposes directly related to the construction and operation of the Project within the Flood Impact Area, the Owner grants BC Hydro the right, liberty and right of way in its sole discretion to do any of the following:

- (a) To saturate, permeate, overflow, flood, cover the Flood Impact Area or any part or parts thereof with the flood, slack or backwater created by the construction or operation of the Project;
- (b) To cause debris to be deposited on the Flood Impact Area as a result of the overflowing, flooding or covering of the Flood Impact Area under paragraph (a);
- (c) To cause erosion, sloughing and landslides in the Flood Impact Area;
- (d) To enter the Flood Impact Area and remove, clear, destroy or dispose of any of the following:
 - (i) any obstructions, accumulations, trash, filth, or other similar things;
 - (ii) any buildings, structures, trailers, tents or shelters used or intended for the purpose of human habitation; or
 - (iii) any timber or natural growth;

which in the reasonable opinion of BC Hydro could be expected to unduly interfere with the construction or operation of the Project;

- (e) To enter the Flood Impact Area and erect structures and signs, excavate and do such other work as may be reasonably required for the construction and operation of the Project;

provided that BC Hydro must provide not less than thirty (30) days' notice of its intention to do anything under paragraphs (d) or (e) except in emergencies in which case BC Hydro shall provide reasonable notice to the Owner.

2.2 Subject to Section 2.3, the Owner will not make, place or maintain or allow to be used, any buildings, structures, trailers, tents or shelters used or intended for the purpose of human habitation in the Flood Impact Area without obtaining the prior written consent of BC Hydro.

2.3 The Parties agree and covenant that:

- (a) BC Hydro will not withhold its consent under Section 2.2 unreasonably and if consent is withheld and if requested by the Owner, the Parties will invoke the dispute resolution provisions set out in Article 7;
- (b) Nothing in this Agreement shall limit the Owner's right to plant and cultivate any growth, including agricultural crops, anywhere in the Flood Impact Area, provided that BC Hydro will not be responsible for any loss of any growth or crops in the Flood Impact Area;
- (c) anything, including any building, structure or other improvement made, placed, erected or maintained, or any crop, tree or plant grown in the Flood Impact Area by the Owner, shall be subject to applicable local government authorizations;
- (d) construction and operation of the Project within the Flood Impact Area shall be subject to applicable Project Authorizations and shall be solely at the responsibility and risk of BC Hydro;
- (e) in exercising its rights under this Agreement, BC Hydro must:
 - (i) take reasonable care to minimize any damage to land and improvements within the Flood Impact Area and must remedy at its cost any damage so caused;
 - (ii) not bury, deposit or place garbage, debris or other material in, on or under the lands within the Flood Impact Area;
 - (iii) not use the Flood Impact Area for storage (including the storage of vehicles) of any kind; and
 - (iv) clean and restore the land within the Flood Impact Area to its original condition on each occasion after it is significantly altered, after exercising its rights under this Agreement and within 6 months of the End Service Date.

2.4 Subject to Section 2.5, for good and valuable consideration, the Owner on its own behalf and on behalf of its officials, employees, agents, successors, legal representatives and assigns hereby forever releases, remises and discharges BC Hydro and any of its officials, employees, agents, successors, legal representatives and assigns, from any and all Claims

which the Owner and its officials, employees, agents, successors, legal representatives and assigns may ever have had, may now have or may in the future have in relation to:

- (a) the rights, liberties and right of way granted to BC Hydro under this Agreement for the construction and operation of the Project within the Flood Impact Area, and
- (b) any impact arising from construction and operation of the Project on the use and occupation of the Flood Impact Area by the Owner.

2.5 The release described in Section 2.4 shall not apply to any Claims to the extent that the Claims results from or arises out of any act or omission which constitutes a breach of this Agreement, wilful misconduct or gross negligence by BC Hydro.

2.6 BC Hydro hereby covenants with the Owner not to cause the water impounded by the Project to rise above a pool elevation of 466 metres above mean sea level according to datum of the Geodetic Survey of Canada as recorded at a gauging station at *.

2.7 The Owner and BC Hydro agree that:

- (a) The Owner's title to all timber cut on the land within the Flood Impact Area by BC Hydro in the exercise of BC Hydro's rights under this Agreement continues to vest in the Owner, unless otherwise agreed by the Parties;
- (b) The title to all things destroyed or disposed of, except timber, within the Flood Impact Area by BC Hydro in the exercise of BC Hydro's rights under this Agreement vests in BC Hydro, unless otherwise agreed by the Parties;
- (c) This Agreement shall be construed as running with the land within the Flood Impact Area, that no part of the fee of the soil shall pass or be vested in BC Hydro under or by these presents; and
- (d) Subject to the rights, liberties and right of way granted to BC Hydro under this Agreement within the Flood Impact Area, the Owner will have quiet use, possession and enjoyment of the land within the Flood Impact Area.

ARTICLE 3 OPERATIONAL IMPACT AREA

3.1 Subject to Section 3.2, for purposes directly related to the construction and operation of the Project within the Operational Impact Area, the Owner grants BC Hydro the right, liberty and right of way in its sole discretion to do any of the following:

- (a) To cause erosion, sloughing and landslides in the Operational Impact Area;
- (b) To enter the Operational Impact Area and erect structures and signs, excavate and do such other work as may be reasonably required for the construction and operation of the Project;

provided that BC Hydro must provide not less than thirty (30) days' notice of its intention to do anything under paragraph (b) except in emergencies in which case BC Hydro shall provide reasonable notice to the Owner.

3.2 The Parties agree and covenant that:

- (a) Nothing in this Agreement shall limit the Owner's right to plant and cultivate any growth, including agricultural crops, anywhere in the Operational Impact Area, provided that BC Hydro will not be responsible for any loss of any growth or crops in the Operational Impact Area;
- (b) anything, including any building, structure or other improvement made, placed, erected or maintained, or any crop, tree or plant grown in the Operational Impact Reserve Area by the Owner, shall be subject to applicable local government authorizations and shall be solely at the responsibility and risk of the Owner;
- (c) construction and operation of the Project within the Operational Impact Area shall be subject to applicable Project Authorizations and shall be solely at the responsibility and risk of BC Hydro;
- (d) in exercising its rights under this Agreement, BC Hydro must:
 - (i) take reasonable care to minimize any damage to land and improvements within the Operational Impact Area and must remedy at its cost any damage so caused;
 - (ii) not bury, deposit or place garbage, debris or other material in, on or under the lands within the Operational Impact Area;
 - (iii) not use the Operational Impact Area for storage (including the storage of vehicles) of any kind; and
 - (iv) clean and restore the land within the Operational Impact Area to its original condition on each occasion after it is significantly altered, after exercising its rights under this Agreement and within 6 months of the End Service Date.

3.3 Subject to Section 3.4, for the consideration aforesaid, the Owner on its own behalf and on behalf of its officials, employees, agents, successors, legal representatives and assigns hereby forever releases, remises and discharges BC Hydro and any of its officials, employees, agents, successors, legal representatives and assigns, from any and all Claims which the Owner and its officials, employees, agents, successors, legal representatives and assigns may ever have had, may now have or may in the future have in relation to:

- (a) the rights, liberties and right of way granted to BC Hydro under this Agreement for the construction and operation of the Project within the Operational Impact Area, and

- (b) impact arising from construction and operation of the Project on the use and occupation of the Operational Impact Area by the Owner.
- 3.4** The release described in Section 3.3 shall not apply to any Claims to the extent that the Claims results from or arises out of any act or omission which constitutes a breach of this Agreement, wilful misconduct or gross negligence by BC Hydro.
- 3.5** The Owner and BC Hydro agree that:
- (a) The Owner's title to all timber cut on the land within the Operational Impact Area by BC Hydro in the exercise of BC Hydro's rights under this Agreement continues to vest in the Owner, unless otherwise agreed by the Parties;
 - (b) The title to all things destroyed or disposed of, except timber, within the Operational Impact Area by BC Hydro in the exercise of BC Hydro's rights under this Agreement vests in BC Hydro, unless otherwise agreed by the Parties;
 - (c) This Agreement shall be construed as running with the land within the Operational Impact Area, that no part of the fee of the soil shall pass or be vested in BC Hydro under or by these presents; and
 - (d) Subject to the rights, liberties and right of way granted to BC Hydro under this Agreement within the Operational Impact Area, the Owner will have quiet use, use, possession and enjoyment of the land within the Operational Impact Area.

ARTICLE 4

FINANCIAL CONSIDERATION

- 4.1** In consideration of the Owner's covenants and agreements contained in this Agreement BC Hydro will pay the Owner the amount of \$* within ten (10) Business Days of the Effective Date of this Agreement.

ARTICLE 5 REMEDIES

- 5.1** If a Party is in default under this Agreement, then the other Party may provide written notice (the "**Default Notice**") providing particulars of the alleged default and the Party alleged to be in default will have:
- (a) ten (10) Business Days to cure the default if it relates to a financial payment; or
 - (b) twenty (20) Business Days to cure any default not related to a financial payment, provided that if the nature of the default requires longer than twenty (20) Business Days to cure, then the Party alleged to be in default must take all reasonable steps within such period to commence curing the default and must continue with all reasonable diligence until the default is cured.

- 5.2** If a Party is in default under this Agreement and has not cured the default in accordance with Section 5.1, the non-defaulting Party may, in addition to any remedies it may be entitled to at law, set off against any payments owed to the defaulting Party under this Agreement the amount of any losses it has incurred as a result of the default (as reasonably calculated by the non-defaulting Party and subject to Article 7) or withhold all or a portion of such payments or benefits under this Agreement until the default has been cured.
- 5.3** If a Party neglects or refuses to abide by an order of an arbitrator selected pursuant to Section 7.4, then the other Party may:
- (a) seek from a court any relief that may be necessary to enforce the order including injunctive relief or specific performance; and
 - (b) withhold all or a portion of any payments or benefits accruing under this Agreement pending compliance by the other Party with the order of the arbitrator.
- 5.4** Subject to Sections 2.4, 2.5, 3.3 and 3.4, each Party (an “**Indemnifying Party**”) will indemnify and save harmless the other Party (an “**Indemnified Party**”) from any cause of action, loss, cost or damage that the Indemnified Party may incur that results, directly or indirectly, from a breach of this Agreement by the Indemnifying Party.
- 5.5** Neither Party will have any liability to the other Party in relation to this Agreement under any cause of action or theory of liability for any special, indirect, incidental, punitive, exemplary or consequential losses or damages, including pure economic loss, or loss of opportunity, profit, revenues, production, earnings or contract.

ARTICLE 6 TERM AND NOTICES

- 6.1** The term of the Agreement commences as of the Effective Date and continues in force until the earlier of Cancellation, the date that BC Hydro has delivered written notice to the Owner of Project Completion pursuant to Section 6.2, or the first anniversary of Project Completion.
- 6.2** BC Hydro will deliver to the Owner written notice within thirty (30) days after Project Completion indicating the date thereof.
- 6.3** BC Hydro will deliver to the Owner written notice within ten (10) Business Days after the occurrence of each of the following indicating the date thereof:
- (a) Cancellation;
 - (b) Suspension;
 - (c) the In-Service Date of the Project; and
 - (d) the End-Service Date of the Project.

**ARTICLE 7
DISPUTE RESOLUTION**

- 7.1** If a dispute arises in relation to any matter under this Agreement, either Party may deliver to the other Party a written notice (the “**Dispute Notice**”) describing in reasonable detail the issues in dispute (the “**Dispute**”).
- 7.2** Representatives appointed by the Parties shall attempt in good faith to identify a resolution to the Dispute within fifteen (15) Business Days of delivery of the Dispute Notice and recommend such resolution to the Parties, provided no such recommendation shall be binding on the Parties until approved by both Parties in writing.
- 7.3** The Parties may, at any time after the period set out in Section 7.2 has passed, agree in writing to refer the Dispute to mediation by a mutually acceptable mediator specified in the agreement to mediate. The mediation must be completed within fifteen (15) Business Days of the date of that agreement, or such other period agreed to by the Parties. Each Party is responsible for its own costs of mediation, unless otherwise agreed, and shall bear an equal share of the remuneration and expenses of the mediator.
- 7.4** If the Dispute has not been resolved within 40 (forty) Business Days of the delivery of the Dispute Notice, or such other period agreed to by the Parties, the Dispute shall be referred to and finally resolved by arbitration before a single arbitrator pursuant to the *Arbitration Act*, R.S.B.C. 1996, c.55 and the Parties agree:
- (a) the arbitration shall be administered by the British Columbia International Commercial Arbitration Centre pursuant to the Rules of Procedure for Domestic Commercial Arbitration of the British Columbia International Commercial Arbitration Centre, as amended from time to time; and
 - (b) the place of arbitration will be Vancouver, British Columbia, unless the Parties otherwise agree in writing.

**ARTICLE 8
GENERAL**

- 8.1** Each Party represents and warrants that its signatory set out below has the authority to sign this Agreement on behalf of that Party.
- 8.2** Each Party represents and warrants to the other that it has received independent legal advice regarding this Agreement.
- 8.3** Each Party will do all such further acts and execute and deliver all such further documents in a timely fashion as are reasonably required from time to time in order to fully perform and carry out the terms and intent of this Agreement.
- 8.4** This Agreement is governed by the laws in force in the Province of British Columbia and the laws of Canada applicable therein.

- 8.5** No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
- 8.6** This Agreement does not affect or limit the discretion, rights, duties or powers of BC Hydro, or the Owner if the Owner is a Regional District or municipal government under the *Local Government Act*, under the common law or any statute, bylaw, or other enactment.
- 8.7** Any notice to be given pursuant to this Agreement must be in writing and may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed to have been given when delivered. If notice is mailed, it is to be deemed to have been given 5 days after mailing by deposit at a Canada Post mailing point or office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice for the purposes of this Agreement must do so by delivery as provided in this section. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
- 8.8** If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed provision.
- 8.9** This Agreement is the entire agreement between the parties and neither BC Hydro nor the Owner has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement, and no amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
- 8.10** The headings in this Agreement are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.
- 8.11** This Agreement may be signed by the Parties hereto in counterparts and by facsimile or pdf email transmission, each such counterpart, facsimile or pdf email transmission copy shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

PRIORITY AGREEMENT

* (The “**Chargeholder**”), being the holder of the * (the “*Bank Charges*”, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration (the receipt and

sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Statutory Right of Way (the “**Subsequent Charge**”) and hereby covenants that this Subsequent Charge shall bind the Bank Charges in the Land and shall rank in priority upon the Land over the Bank Charges as if the Subsequent Charge had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

NOTE TO DRAFT:

A variety of general provisions are needed to protect the owner’s interest in the land including provisions to address:

- Periodic review of the location of the Impact Lines
- Time to remedy breach (See sample above)
- Provisions governing reclamation and restoration of lands after End-Service Date in the lead up to project completion
- Dispute resolution (See sample above)
- Payment for grant of rights to BC Hydro (See sample above)
- Others to be identified